

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 968 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GSRTC

Versus

MUSABHAI JIVABHAI JUNEJA

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Appearance:

MR MANISH R BHATT	for Petitioner
MR HK RATHOD	for Respondent No. 1

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 27/02/96

ORAL JUDGEMENT

1. Rule. Heard Mr. M.R. Bhatt learned advocate for the petitioner and Mr. H.K. Rathod, learned advocate for the respondent. Rule made returnable forthwith. The petition seeks to challenge the Award of the Labour Court dated 18.8.1995 in Reference (LCJ) No. 249/1993. The respondent was proceeded in a departmental inquiry on an allegation that he took 3 persons in his bus while working as a driver in an

unauthorised manner and when quarried by the Inspecting Staff, talked to them in a rude manner. He was ordered to be dismissed and that dismissal led to the proceedings in the Labour Court and to the impugned Award.

2. I have gone through the impugned Award and it appears that the discussion therein about the entire controversy is not very satisfactory. Even then, I have gone to the merits of the matter and looked into the past service record. From that, it is seen that earlier 3 incidents were reported prior to the impugned order. In an incident of April 19, 1980 for coming late on one day, one increment was stopped for three months. Thereafter for absnece of 1 and 1/2 month i.e. in the month of October/November, 1980, the respondent was simply warned. In a third incident of use of improper language to a helper in August, 1981, the respondent was fined with Rs. 10. The present incident hyas happened much thereafter i.e. in December, 1989. Assuming that the incident as alleged did occur, the defence of the respondent was that he was carrying his relatives in the bus and that is permitted. There is not much discussion on this aspect in the order of the Labour Court as to what is the correct position with respect to such an concession nor is there anything stated about this facility as claimed by the respondent in the petition. So far as other ingredient of the misconduct namely; using intermperate language is concerned, the same is not seriously disputed, but in my view the order of dismissal is in excess. In the case of Rama Kant Misra vs. State of U.P. and others, reported in 1982 LIC p.1790, the Supreme Court has observed that use of improper language may show lack of culture, but merely use of such language inconnected with subsequent positive action would not permit an extreme penalty or dismissal. In the case of Jaswant Singh v. Pepsu Roadways Transport Corporation and another, reported in AIR 1984 p.355, where the facts were different and driving by drunken driver was involved, the Supreme Court directed re-instatement of the employee with denial of three increments for three years. In the instant case, on my query, Mr. Rathod for the respondent submits that if the court is so inclined, the respondent may be denied one increment for one year without cumulative effect while retaining operative part of the impugned Award. Mr. Bhatt learned advocate for the petitioner-Corporation submitted that the conduct of this type on the part of the traffic employee to his superior was not expected from the point of discipline and, hence an appropriate entry be made in his service record. In my view, both the suggestions are valid and, deserve acceptance, in view thereof, I modify the impugned Award in its operative part to provide in addition to what is already provided that the respondent will be denied one increment for one year beginning from 1st January, 1996 without cumulative

effect. The petitioner will be at liberty to make necessary entry in the service record and issue warning to the respondent that similar conduct in future will invite a stringent action. The petitioner to implement the modified Award by re-instating the respondent on or before 18.3.1996 and the amount of back-wages to be paid by the end of March, 1996. Rule is accordingly made absolute in terms as stated above. There shall be no order as to costs.

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